

Decision No. C18-1177-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18F-0866E

DELTA-MONTROSE ELECTRIC ASSOCIATION,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT.

**INTERIM COMMISSION DECISION GRANTING
MOTIONS IN PART AND DENYING
IN PART, REQUIRING JOINT FILING,
AND SETTING STATUS CONFERENCE**

Mailed Date: December 28, 2018
Adopted Date: December 19, 2018

TABLE OF CONTENTS

I.	BY THE COMMISSION	2
A.	Statement	2
B.	DMEA’s Motion.....	2
C.	Tri-State’s Motion	3
D.	Findings and Conclusions.....	4
II.	ORDER.....	5
A.	It Is Ordered That:	5
B.	ADOPTED IN COMMISSIONERS’ WEEKLY MEETING December 19, 2018.....	7

I. BY THE COMMISSION**A. Statement**

1. By this Decision, we grant in part and deny in part a Motion Requesting the Commission Establish a Procedural Schedule and Request for Commission Hearing *En Banc* (DMEA Motion) filed by Delta-Montrose Electric Association (DMEA) on December 10, 2018, as well as a Motion for Extension of Time to Respond to Formal Complaint filed by Tri-State Generation and Transmission Association, Inc. (Tri-State) on December 17, 2018.

2. On December 6, 2018, DMEA filed a Formal Complaint against Tri-State. The Commission issued its Order to Satisfy or Answer to Tri-State on December 10, 2018, as well as an Order Setting Hearing and Notice of Hearing, which set the matter for a hearing to be held on February 19, 2019. Generally, the Formal Complaint alleges that Tri-State's exit charge for DMEA to withdraw from Tri-State in order to pursue cleaner power supply alternatives is unjust, unreasonable, and discriminatory.

B. DMEA's Motion

3. In DMEA's Motion, it proposes a procedural schedule in this proceeding that among other things, establishes February 1, 2019 to file its direct testimony; an evidentiary hearing scheduled for May 8 through 13, 2019; a Commission Decision by July 11, 2019; and a Commission Decision on any applications for rehearing, reargument, or reconsideration issued by August 30, 2019. DEMA notes that the proposed schedule complies with the statutory requirement under § 40-6-108(4), C.R.S., to complete a complaint hearing within 210 days.

4. DMEA asserts that time is of the essence here since it has attempted for more than two years to obtain a just, reasonable, and nondiscriminatory exit charge from Tri-State. DMEA proposes that its procedural schedule will advance the proceeding in an efficient manner.

5. Additionally, DMEA seeks a hearing *en banc* because this matter involves important legal and policy issues for the future of energy supply in Western Colorado, and because time is of the essence in this proceeding.

6. Tri-State responded that it opposes DMEA's proposed departure from established protocols in complaint proceedings to establish a procedural schedule at the outset of the proceeding. Tri-State argues that DMEA has failed to demonstrate extraordinary circumstances to warrant a departure from the Commission's normal Complaint procedures.

7. Tri-State takes the position that it is premature to establish a procedural schedule at this early stage, and since it intends to file preliminary and dispositive motions, efficiency is not served by establishing a procedural schedule at this particular time.

8. Nor is Tri-State moved by DMEA's request that the Commission hear this matter *en banc*. While Tri-State agrees with DMEA that this matter involves important legal and policy issues, it is for this reason that it cautions that the Commission must proceed thoughtfully and cautiously, particularly in light of the claims and relief sought.

9. Tri-State is of the opinion that administrative efficiency is best served by allowing the parties to fully develop the record through briefing and hearings before an administrative law judge (ALJ) so as to properly inform the Commission's ultimate decision with respect to DMEA's claims. According to Tri-State, it is best to refer the matter to an ALJ with an initial focus on the Commission's jurisdiction to hear the Formal Complaint in the first instance.

C. Tri-State's Motion

10. Tri-State requests that its response date to DMEA's Formal Complaint be extended from December 31, 2018 to January 28, 2019 in order to allow adequate time for Tri-State to prepare a response to the important issues implicated by the Formal Complaint. In

the alternative, Tri-State requests that the Commission stay the response deadline and schedule a status conference where the scheduling and procedural matters may be discussed.

11. Consequently, pursuant to Commission Rule 1003, 4 *Code of Colorado Regulations* (CCR) of the Commission's Rules of Practice and Procedure, Tri-State requests a waiver or variance of the deadline for responding to the Complaint set in Rules 1302(g) and 1308(d), and an extension of that deadline to, and including, January 28, 2019.

12. In its response, DMEA indicates that it is amenable to an extension of time for Tri-State to respond to the Formal Complaint, as long as it does not cause undue delay in getting to the merits of the proceeding. However, DMEA is concerned that it is Tri-State's strategy to delay this proceeding as much as possible.

13. While Tri-State argues that the jurisdictional question will require additional time similar to Proceeding No. 13F-0145E, it is DMEA's contention that this matter was already resolved in that proceeding and therefore there is no reason to stay or delay this proceeding to allow Tri-State to make the same arguments the Commission previously ruled upon. DMEA believes that Tri-State's request to hold a status conference on February 19, 2019 is merely an attempt to delay the adjudication of this proceeding for as long as possible.

D. Findings and Conclusions

14. Considering the DMEA Motion which requests that the Commissioners hear this matter, we find that the matters addressed in the Formal Complaint are of such magnitude that it is appropriate that the Commission hear this case *en banc*. However, we decline to adopt the procedural schedule proposed by DMEA. Instead, we require the parties to file a joint proposed procedural schedule. The deadline to file this pleading will be January 28, 2019.

15. Considering Tri-State's Motion which requests an extension of time to respond to the Formal Complaint, we find good cause to grant the motion in part. We extend the deadline for Tri-State to respond to the Formal Complaint to January 15, 2019. To the extent that we grant Tri-State's Motion in part, the request for a waiver or variance of the Formal Complaint response deadline pursuant to 4 CCR 723-1-1302(g) and 1308(d) is granted.

16. Although we will require the parties to file a proposed procedural schedule by January 28, 2019, we nonetheless find it necessary to set a status conference to discuss the proposed schedule, as well as whether the question of Commission jurisdiction over this matter has been previously settled by Proceeding No. 13F-0145E.

17. We find that given our schedules for the next few weeks, and the transition to a new administration and a new Commissioner, the most ideal date for a status conference will be Wednesday February 6, 2019, commencing at 2:00 p.m. The parties should be prepared to fully address the above two matters at the status conference.

II. ORDER

A. It Is Ordered That:

1. The Motion Requesting the Commission Establish a Procedural Schedule and Request for Commission Hearing *En Banc* filed on December 10, 2018 by Delta-Montrose Electric Association (DMEA) is granted in part and denied in part consistent with the discussion above.

2. This Formal Complaint proceeding will be heard *en banc* by the Commission.

3. The procedural schedule proposed by DMEA is disallowed.

4. DMEA and Tri-State Generation and Transmission Association, Inc. (Tri-State) shall file a joint proposed procedural schedule no later than January 28, 2019.

5. Tri-State's Motion for Extension of Time to Respond to Formal Complaint filed on December 17, 2018 is granted in part.

6. The deadline for Tri-State to respond to the Formal Complaint is extended to January 15, 2019.

7. The request of Tri-State for a waiver or variance of the Formal Complaint response deadline pursuant to 4 *Code of Colorado Regulations* 723-1-1302(g) and 1308(d) is granted consistent with the discussion above.

8. DMEA and Tri-State shall file a new joint proposed procedural schedule no later than January 28, 2019.

9. A status conference will be scheduled in this proceeding as follows:

DATE: February 6, 2019

TIME: 2:00 p.m.

PLACE: Public Utilities Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado 80203

10. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 19, 2018.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

WENDY M. MOSER

Commissioners